

(4)
No. 98-1299

Supreme Court, U.S.
FILED
JUL 16 1999
OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term, 1998

THE STATE OF NEW YORK,

Petitioner,

vs.

MICHAEL HILL,

Respondent.

ON WRIT OF CERTIORARI TO THE
NEW YORK STATE COURT OF APPEALS

JOINT APPENDIX

HOWARD RELIN*
District Attorney of Monroe County
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Of Counsel:

Robert Mastrocola,
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Counsel for Petitioner

*Counsel of Record

EDWARD JOHN NOWAK*
Monroe County Public
Defender
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(716) 428-5210
Counsel for Respondent

**PETITION FOR CERTIORARI FILED FEBRUARY 16, 1999
CERTIORARI GRANTED MAY 17, 1999**

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THE DAILY RECORD

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5788

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CHRONOLOGICAL LIST OF IMPORTANT DATES

April 17, 1995	Respondent filed motion in Monroe County Court (New York) to dismiss indictment pursuant to Interstate Agreement on Detainers
April 24, 1995	Petitioner filed response to motion to dismiss indictment
May 2, 1995	Respondent filed reply to petitioner's response
May 2, 1995	Monroe County Court issued decision denying respondent's motion to dismiss indictment
June 8, 1995	Monroe County Court entered judgment of conviction and sentence against respondent
November 19, 1997	New York Supreme Court, Appellate Division, Fourth Department entered order affirming respondent's judgment
November 18, 1998	New York Court of Appeals entered order/judgment reversing Appellate Division order and dismissing indictment against respondent

February 16, 1999 Petitioner filed petition for writ of
certiorari with United States Supreme
Court

May 17, 1999 United States Supreme Court granted
petition for writ of certiorari

[OHIO DEPT. OF REHABILITATION & CORRECTION]

Sec. 2963.30 ORC

AGREEMENT ON DETAINERS: FORM I

*In duplicate. One copy of this Form, signed by the prisoner
and the warden, should be retained by the warden. One copy,
signed by the warden, should be retained by the prisoner.*

**NOTICE OF UNTRIED INDICTMENT,
INFORMATION OR COMPLAINT
AND OF RIGHT TO REQUEST DISPOSITION**

Inmate: FOSTER, LEROY No. A282-660

Institution: Lorain Correctional Institution

Pursuant to the Agreement on Detainers, you are hereby
informed that the following are the untried indictments,
informations or complaints against you concerning which the
undersigned has knowledge, and the source and contents of
each:

MURDER F2, ROBB F1-GATES PD ROCHESTER
NEW YORK

You are hereby further advised that by the provisions of
said Agreement you have the right to request the appropriate
prosecuting officer of the jurisdiction in which any such

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM I (Continued)

indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM I (Continued)

notify the **RECORD OFFICE** of the institution in which you are confined.

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody, but you can not oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery. You are also statutorily entitled to the procedural protections provided in state extradition laws.

DATED: **JANUARY 4, 1994**

s/Norm Rose (Acting Warden)(s/KMR)
(Warden - Superintendent - Director)

CUSTODIAL AUTHORITY

_____**NAME:** Terry J. Collins, Warden
INSTITUTION: Lorain Correctional Institution
ADDRESS: 2075 S. Avon Belden Road
CITY/STATE: Grafton, Ohio 44044
TELEPHONE NO.: (216) 748-1049

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM I (Continued)

RECEIVED

DATE: **JANUARY 4, 1994**NAME OF INMATE: s/Leroy Foster No. A282-660
(signature)WITNESS: _____ Date: March 19, 1993
(signature)Debbie Miller, Administrative Assistant II
(Name and Title)

[OHIO DEPT. OF REHABILITATION & CORRECTION]

AGREEMENT ON DETAINERS: FORM II

Six copies, if only one jurisdiction within the state involved has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state involved. One copy should be retained by the prisoner; one copy should be retained by the warden. Signed copies must be sent to the Agreement Administrators of the sending and receiving states, the prosecuting official in the jurisdiction which placed the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting officials and the court must be transmitted by certified or registered mail, return receipt requested.

**INMATE'S NOTICE OF PLACE OF IMPRISONMENT
AND REQUEST FOR DISPOSITION OF
INDICTMENTS, INFORMATIONS OR COMPLAINTS**

TO: HOWARD R. RELIN, Prosecuting Officer, NEW YORK
(jurisdiction)
GATES PD - MONROE COUNTY, Court NEW YORK
(jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM II (Continued)

You are hereby notified that the undersigned is now imprisoned in the **Lorain Correctional Institution at Grafton, Ohio** and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

MURDER F2, ROBB F1-GATES PD ROCHESTER
NEW YORK

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceedings contemplated hereby or included herein, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which I now am confined.

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to sender.

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM II (Continued)

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

Dated: **JANUARY 4, 1994** s/Leroy Foster
(Inmate's Signature)

(Typed): **FOSTER, LEROY A282-660**
(Inmate's Name and Number)

The inmate must indicate below whether he has counsel or wishes the court to appoint counsel for purposes of any proceedings preliminary to trial which may take place before his delivery to the jurisdiction in which the indictment, information or complaint is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____
(Name of Counsel)

Whose address is _____
(Street, City and State)

X B. I request the court to appoint counsel.

I (have read the above) (have had the above read and explained to me), and I understand its meaning and agree thereto.

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM II (Continued)Dated: **JANUARY 4, 1994**s/Leroy Foster

(Inmate's Signature)

(Typed): **FOSTER, LEROY A282-660**
(Inmate's Name and Number)Dated: **JANUARY 4, 1994**WITNESS: s/K. Rinaldi
(Signature)Debbie Miller, Administrative Assistant II

[OHIO DEPT. OF REHABILITATION & CORRECTION]

AGREEMENT ON DETAINERS: FORM III

In the case of an inmate's request for disposition under Article III, copies of this form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor under Article IV, a copy of this form should be sent to the prosecutor upon receipt by the warden of Form V. Copies also should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be given to the inmate.

CERTIFICATE OF INMATE STATUS

RE: **FOSTER, LEROY** **A282-660**
(Inmate) (Number)

Lorain Correctional Institution **Grafton, Ohio**
(Institution) (Location)

The (custodial authority) hereby certifies:

1. The term of imprisonment under which the prisoner, above named, is being held: **3 AIG CS/W 1 CC/W 5AI-25 YRS**
2. The time already served: **22 DAYS, 1 MONTH**
3. Time remaining to be served: **9 MONTHS, 5 YEARS 1ST HEARING**
4. The amount of good time earned: **N/A**

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM III (Continued)

5. The date of parole eligibility of the inmate: 10/99
6. The decisions of the Parole Board relating to the prisoner:
(If additional space is need use reverse side.) N/A
7. Maximum expiration date under present sentence:
-4/-4/2021
8. Detainers currently on file against this inmate from your
state are as follows: MURDER F2, ROBB F1-GATES PD
ROCHESTER NEW YORK

Dated: **JANUARY 4, 1994**

s/Norm Rose (Acting Warden)(s/KMR)
(Warden - Superintendent - Director)

CUSTODIAL AUTHORITY

NAME: Terry J. Collins, Warden
 INSTITUTION: Lorain Correctional Institution
 ADDRESS: 2075 S. Avon Belden Road
 CITY/STATE: Grafton, Ohio 44044
 TELEPHONE NO.: (216) 748-1049

[OHIO DEPT. OF REHABILITATION & CORRECTION]

Sec. 2963.30 ORC

AGREEMENT ON DETAINERS: FORM IV

In the case of an inmate's request for disposition under Article III, copies of this form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor, this Form should be completed after the Governor has indicated his/her approval of the request for temporary custody, expiration of the 30-day period and/or successful completion of a (Cuyler) hearing. Copies of this Form should then be sent to all officials who previously received copies of Form III. One copy should also be given to the prisoner and one copy should be retained by the Warden. Copies mailed to the prosecutor should be sent by certified mail, return receipt requested.

OFFER TO DELIVER TEMPORARY CUSTODY

To: **HOWARD R. RELIN, DATED: JANUARY 4, 1994**
 Prosecuting Officer
 (Insert Name and Title
 if Known)

GATES PD-MONROE COUNTY,
 Court
 (Jurisdiction)

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM IV (Continued)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: FOSTER, LEROY No. A282-660
(Inmate) (Number)

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby offers to deliver temporary custody of the above-named prisoner to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is (described in the attached inmate's request which is dated **JANUARY 4, 1994**) (described in your request for custody of N/A).

(The required Certificate of Inmate Status is enclosed.)

If proceedings under Article IV(d) of the Agreement are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in your state and you are hereby authorized to transfer the inmate to custody of appropriate authorities in these jurisdictions for purposes of disposing of these indictments, informations or complaints.

(Continued on Next Page)

AGREEMENT ON DETAINERS: FORM IV (Continued)

JURISDICTION: NEW YORK

OFFENSE: U S MARSHALS SERVICE

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible?

Kindly acknowledge.

Dated: **JANUARY 4, 1994**

s/Norm Rose (Acting Warden) (s/KMR)
(Warden - Superintendent - Director)

CUSTODIAL AUTHORITY

NAME: Terry J. Collins, Warden
INSTITUTION: Lorain Correctional Institution
ADDRESS: 2075 S. Avon Belden Road
CITY/STATE: Grafton, Ohio 44044
TELEPHONE NO.: (216) 748-1049

[NEW YORK DEPT. OF CORRECTIONAL SERVICES]

Agreement on Detainers: Form VII

IMPORTANT: This form should only be used when an offer of temporary custody has been received as the result of a prisoner's request for disposition of a detainer. If the offer has been received because another prosecutor in your state has initiated the request, use Form VIII. Copies of Form VII should be sent to the warden, the prisoner, the other jurisdictions in your state listed in the offer of temporary custody, and the Agreement Administrator of the state which has the prisoner incarcerated. Copies should be retained by the person filing the acceptance and the judge who signs it.

PROSECUTOR'S ACCEPTANCE OF TEMPORARY CUSTODY OFFERED IN CONNECTION WITH A PRISONER'S REQUEST FOR DISPOSITION OF A DETAINER

TO: Norm Rose (Acting Warden)
(Warden, Superintendent, Director)

Loraine Correctional Institution
(Institution)

2075 S. Avon Belden Road Grafton, Ohio 44044
(Address)

In response to your letter of January 4, 1994 and
(Date)

Agreement on Detainers: Form VII (Continued)

offer of temporary custody regarding LeRoy Foster aka
(Name of Prisoner)

Dwain Reed who is presently under indictment, information, complaint in the County of Monroe, Roch. N.Y. of which I
(Jurisdiction)

am Assistant District Attorney, please be advised that I accept
(Title of Prosecuting Officer)

temporary custody and that I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

COMMENTS: [If your jurisdiction is the only one named in the offer of temporary custody, use the space below to indicate when you would like to send your agents to conduct the prisoner to your jurisdiction. If the offer of temporary custody has been sent to other jurisdictions in your state, use the space below to make inquiry as to the order in which you will receive custody, or to indicate any arrangements you have already made with other jurisdictions in your state in this regard.]

Signed: s/Gregory J. Huether

Title: ASSISTANT DISTRICT ATTORNEY

Agreement on Detainers: Form VII (Continued)

I hereby certify that the person whose signature appears above is an appropriate officer with the meaning of Article IV(a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

DATED: 4-11-94 Signed: s/David D. Egan
(Judge)

Monroe County Court Judge
(Court)

[NEW YORK DEPT. OF CORRECTIONAL SERVICES]

Agreement on Detainers: Form VI

In quadruplicate. All copies, signed by the prosecutor and the agent, should be sent to the Administrator of their own state. After signing all copies, the Administrator should retain one for his files. Send one to the warden of the institution in which the prisoner is located and return two copies to the prosecutor who will give one to the agent for use in establishing his authority and place one in his files.

**EVIDENCE OF AGENT'S AUTHORITY TO ACT FOR
RECEIVING STATE**

TO: Honorable Thomas A. Coughlin, III
Administrator of the Agreement on Detainers

LeRoy Foster aka Dwain Reid is confined in
(Inmate)

Lorain Correctional Facility 2075 S. Avon Belden Road
(Institution) (Address)

Grafton, Ohio 44044 and will be taken into custody at the

institution on 5/16/94 or 5/17/94 for return to this

jurisdiction for trial on or about May 18, 1994 @ 9:30 A.M.

in accordance with Article V(b), I have designated Andy

DeMarco/Michael Spampinato whose signature appears below

Agreement on Detainers: Form VI (Continued)

as agent to return the prisoner.

s/Gregory J. Huether
(Prosecuting Official)

s/Michael Spampinato
s/Andrew DeMarco
(Agent's Signature)

TO: Warden

In accordance with the above representation and the provisions of the Agreement on Detainers, _____
(Agent)
is hereby designated as agent for this state to return _____
_____ for trial.
(Inmate)

s/P. Coombe
Agreement Administrator

STATE OF NEW YORK COUNTY OF MONROE
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

NOTICE
OF
MOTION

DWAIN REID (MICHAEL HILL),

Indict No. 160/94
Defendant. Filed: 3/11/94
Index No. 2549/94

PLEASE TAKE NOTICE that upon the annexed affirmation of EDWARD F. SCANLAN, Esq., attorney for the defendant, the undersigned will move this Court, at a criminal term thereof, before the Honorable David D. Egan, Monroe County Court Judge, located at the Hall of Justice, City of Rochester, County of Monroe, on the 26th day of April, 1995, at 9:30 a.m., or as soon thereafter as counsel may be heard, for the following relief:

1. An Order pursuant to CPL §580.20, Article III dismissing the Indictment herein with prejudice on the ground that he was not brought to trial within 180 days after he requested final disposition of the indictment, information or complaint.

2. An Order granting such other and further relief as this Court deems just and proper.

DATED: Rochester, New York
April 17, 1995

Yours, etc.

EDWARD J. NOWAK
Monroe County Public
Defender

BY: EDWARD F.
SCANLAN
Assistant Public
Defender
10 North Fitzhugh St.
Rochester, NY 14614
(716) 428-5210

TO: HOWARD R. RELIN
Monroe County District Attorney

ATTN: GREGORY HUETHER
Assistant District Attorney

STATE OF NEW YORK COUNTY OF MONROE
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

AFFIRMATION

DWAIN REID (MICHAEL HILL),

Defendant.

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

EDWARD F. SCANLAN, an attorney admitted to practice in the State of New York, affirms under penalty of perjury pursuant to CPLR 2106 that:

1. I am an Assistant Public Defender for the County of Monroe and have been assigned to represent the defendant in this action.

2. I make this affirmation in support of the relief requested in the annexed Notice of Motion and for such other and further relief as to this Court may seem just and proper.

3. The source and ground for your affiant's belief on the allegations made in each paragraph of this motion are conversations between your affiant and defendant, and a review of the various and sundry papers filed in connection with the indictment.

4. On or about December 30, 1993, defendant was a sentenced prisoner in the State of Ohio at the Lorain Correctional Institution in Grafton, Ohio. That sentence in the State of Ohio has not yet expired.

5. On or about December 30, 1993, a detainer accusing defendant of Murder Second Degree and Robbery First Degree in Monroe County, New York State, was lodged

against defendant at the Lorain Correctional Institution.

6. On or about January 4, 1994, the warden of the Lorain Correctional Institution advised the defendant of the detainer and on that same date defendant made a formal request pursuant to the Agreement on Detainers for a final disposition of the Monroe County charges of Murder Second Degree and Robbery First Degree.

7. On or about January 10, 1994, defendant's request for a final disposition pursuant to the Agreement on Detainers was delivered to the court and prosecutor in Monroe County.

8. Since January 10, 1994 until April 17, 1995, four hundred sixty two (462) days have elapsed and defendant has not been tried on these charges. Article III of the Agreement on Detainers states that defendant shall be tried within 180 days after the notice of his request for a final disposition.

9. The prosecution has never requested that this court "grant any necessary or reasonable continuance . . . for good cause shown in open court, the prisoner or his counsel being present" as required by Article III of the Agreement on Detainers.

10. The only tolling of this 180 day time period that can reasonably be argued by the prosecution is the period of time from the service of defendant's omnibus motion until the conclusion of the hearings and this Court's decision on the matters raised therein. That period of time commenced on July 12, 1994 and ended on December 5, 1994 when the Court rendered its written decision, a period of one hundred forty six (146) days.

11. Tolling the time period for that 146 days still leaves a time period of three hundred sixteen (316) days that has elapsed since notice of defendant's request for final disposition was received, well beyond the one hundred eighty (180) days allowed by the Agreement on Detainers.

12. Wherefore, defendant requests this Court to dismiss this Indictment under prejudice pursuant to the Article on Detainers, CPL §580.20, or for a hearing to resolve any disputed issues of fact raised by this motion and the

prosecution's response.

s/Edward F. Scanlan
EDWARD F. SCANLAN

Affirmed this
17th day of April, 1995

STATE OF NEW YORK COUNTY OF MONROE
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DWAIN REID,

Defendant.

REPLY
TO
NOTICE
OF
MOTION

IND 160/94

PLEASE TAKE NOTICE, that upon the Defendant's Motion to Dismiss Indictment under CPL Article 580.20 and for other further relief, the affidavit upon which that motion was made, and the annexed Affirmation of GREGORY J. HUETHER, ESQ., in support of this cross-motion will be made by the undersigned, pursuant to Section 240.20 of the Criminal Procedure Law, upon the argument of the Defendant's motion, for an Order allowing Dismissal of the Indictment and for other further relief as set forth in the annexed Affirmation.

Dated: Rochester, New York
April 24, 1995

Yours, etc.

HOWARD R. RELIN
DISTRICT ATTORNEY OF
MONROE COUNTY
201 Hall of Justice
Rochester, New York 14614
BY: GREGORY J. HUETHER
Assistant District Attorney

To: Edward Scanlan, Esq.

STATE OF NEW YORK COUNTY OF MONROE
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DWAIN REED,

Defendant.

ANSWERING
AFFIRMATION

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

I, GREGORY J. HUETHER, ESQ., an attorney duly admitted to practice law in the State of New York, and an Assistant District Attorney in and for the County of Monroe, hereby affirms under the penalties of perjury, the following:

1. I am an attorney admitted to practice law in the State of New York, and an Assistant District Attorney for the County of Monroe.

2. That I base my response upon personal knowledge as well as upon information and belief, the sources of which include my review of various reports, papers, and documents, as well as conversations with witnesses and parties herein.

3. That I specifically deny each and every allegation of the defendant's motion papers, and specifically assert that there is no violation of CPL 580.20 with respect to the trial of this defendant.

4. CPL Article 580.20 provides a statutory framework for resolution of detainers lodged against inmates imprisoned outside this state. Under Article III, a 180 day requirement for trial on the detainer is established, and may be extended upon good cause being shown in open court with the defendant and his attorney present. The court having jurisdiction of the

matter, "may grant any necessary or reasonable continuance" (CPL 580.20, Article III[a]).

The People respectfully submit that due to this defendant's actions, together with his attorney, all time from his arraignment on May 18, 1994 to the present is fully excludable, and that additional time preceding such appearance is likewise excludable.

5. The defendant's motion papers fail to set forth a number of significant dates in the history of this case, and simply allege a totality of days in excess of the 180 day time limit has occurred.

The following chronological sequence is of great significance in determining the instant motion by the defense.

(a) December 30, 1993 - defendant served with a warrant detainer while defendant was incarcerated as a sentenced prisoner at the Lorain Correctional Facility in Ohio.

(b) January 4, 1994 - defendant signed an Agreement on Detainers for New York State and for the Federal Government.

(c) January 7, 1994 - Monroe County District Attorney's Office's first receipt of above demand.

(d) February 28, 1994 - scheduled trial date for co-defendant Jeffrey Tobias to be tried on this date for same crimes. Trial cancelled. Grand Jury presentation as to this defendant and co-defendant Earl Williams begun on March 1, 1994.

(e) March 9, 1994 - Grand Jury presentation against both defendants completed.

(f) March 11, 1994 - Indictment warranted lodged against the defendant in Ohio.

(g) April 7, 1994 - People send their completed application form with all certified documents to Ohio for defendant's return. Received by Ohio April 11, 1994.

(h) April 13, 14, 15, 1994 - Further forms delivered to and from Ohio by Monroe County District Attorney's Office through Albany Governor's Office.

(i) April 20, 1994 - defendant's original date scheduled

for his pickup. Cancelled due to necessary transfer of papers to foreign state being delayed.

(j) May 13, 1994 - Defendant delivered to the Monroe County Jail.

(k) May 18, 1994 - Defendant arraigned on indictment. Case adjourned for motions on the 45 day calendar. No objection made by defendant and his counsel, and at their request. The People announced readiness, and were in fact ready. (See transcript attached).

(l) July 20, 1994 - Adjourned with consent of defendant and counsel to argue motions. (See transcript attached).

(m) July 29, 1994 - Argument held and hearings ordered. Grand Jury minutes provided without delay.

(n) August 19, 1994 - Hearing, pursuant to defendant's motions, begun and not completed. Adjourned to continue without objection.

(o) September 20, 1994 - Hearing scheduled and continued. Adjourned to October 3, 1994.

(p) October 3, 1994 - Defense unable to proceed due to attorney unavailability.

(q) October 12, 1994 - Hearing continued and completed. Adjourned by consent of defendant to submit arguments and exhibits to Court.

(r) November 16, 1994 - Court control date for decision. Case put onto trial calendar without date, and no decision. No objection by defendant and his attorney. (See transcript attached).

(s) December 5, 1994 - Court renders written decision.

(t) January 9, 1995 - Court sets trial date for May 1, 1995 with defendant and attorney. Attorney for defendant expressly states, "That will be fine, Your Honor". (See attached transcript).

6. It is clear from the above chronology of events that the People have, at all times, exercised due diligence in their efforts to respond and comply with the defendant's demand for resolution of the charges against him. Both as to pre-

indictment and post-indictment times, the People acted promptly and reasonably in scheduling and taking all necessary steps to return this defendant from Ohio.

The defendant's incarceration in Ohio does, by itself, entail a lengthy, complicated, and necessarily time consuming effort to return him to New York State. Despite that fact, the People effected the defendant's return in approximately sixty-seven days from Indictment on March 11, 1994 to his arraignment on May 18, 1994.

The People submit that the period of delay attributable to the process necessary in returning the defendant should be held as excludable since honoring the defendant's request necessarily involved a period of delay for statutory compliance once an indictment had been obtained. Indeed, Section 580.20 Article IV recognizes and provides a built-in 30 day period which is excluded for defendant to respond. While not applicable here, since we are proceeding under Article III, this recognition should likewise exist for the delay involved in this process. See People v. Chan, 81 AD2d 765 (First Dept., May 1981) recognizing the exclusion of such a period as being quite reasonable. See also People v. Vrlaku, 73 NY2d 800 (1988) at 802, where the Court of Appeals recognized that where the defendant's own conduct subjected himself to Federal and State prosecution, the 180 day time period was to be extended. The process of complying with this defendant's request is no less a result of his "conduct" in making his demand, and inherently involves time when he cannot be available without the required compliance in submitting voluminous documents to the foreign state.

7. Even assuming arguendo that all time up to the defendant's arraignment is not excludable, the People did return the defendant to this Court for trial in less than 180 days. All additional time since his return has been expended either solely due to the defendant and his attorney's request, or with their explicit, unequivocal consent. Now, on the very eve of the agreed upon date for trial, the defendant lodges this complaint as to the delay he has sought and occasioned on numerous

appearances before this Court.

8. Specifically, this defendant appeared at arraignment with counsel, and agreed to and requested the opportunity to file omnibus motions with the Court.

By his own actions, the defendant himself cannot fairly be considered to be ready for trial. The defendant's own unreadiness also tolls the time limits of Article 580.20. See People v. Cook, 63 AD2d 841 (Fourth Dept., 1978) at page 842. Also, People v. Chiofalo, 73 AD2d 673 (Second Dept., 1979), stating, "The purpose of the detainer agreement in requiring a prompt trial on outstanding indictments is not to be thwarted by a defendant who might occasion delay and then attempt to obtain a dismissal based upon that delay".

9. While the defendant's papers recognize the motion period as generally excludable, they attempt to limit their share from only July 12, 1994 to December 5, 1994.

A review of the defendant's arraignment transcript provides clear support that the time period extends well before July 12, 1994.

Similarly, the defendant's posture even as of January 9, 1995 contradicts and belies such a claim, especially with the explicit agreement to the May 1, 1995, trial date without any reservation. That date was specifically agreed upon by the defense after the Court and both counsel reviewed their prospective schedules and availability in 1995. The defendant has continually agreed with such a date and delay, and now claims such time is entirely without his consent and cannot be excluded.

10. The People submit that both as to pre-arraignment times and as to post-arraignment appearances by the defendant, the People have hereby demonstrated "good cause shown" which serves as a basis to exclude significant portions of time, and bring this defendant's trial well within the 180 day time limit of CPL Article 580.20.

Both as to requests for adjournments, periods of delay occasioned by or consented to by the defendant and his attorney, and as to periods of the defendant's own unreadiness,

the elapsed times have constituted periods which are fairly considered as excludable from computation.

By all calculations, the People are well within the 180 day time limit of bringing the defendant to trial by all of the above excludable periods.

Therefore, the People respectfully request the motion be denied entirely, and for any and all relief as this Court may deem proper.

Affirmed under penalty of perjury pursuant to Section 2106 of the CPLR, this 24th day of April, 1995.

Respectfully submitted,

HOWARD R. RELIN
DISTRICT ATTORNEY OF
MONROE COUNTY

By: s/Gregory J. Huether
GREGORY J. HUETHER, ESQ.
Assistant District Attorney

[COURT PROCEEDING OF JANUARY 9, 1995]

COUNTY COURT : STATE OF NEW YORK

COUNTY OF MONROE: CRIMINAL BRANCH

----- x #94-0160
THE PEOPLE OF THE STATE OF NEW YORK

-against-

x Murder 2d
Robbery 1st
x

DWAIN REED, aka MICHAEL HILL,

Defendant. x Set Trial
----- x Date

Hall of Justice
Rochester, NY 14614
January 9, 1995

Before:

HONORABLE DAVID D. EGAN,

County Court Judge

Appearances:

HOWARD R. RELIN, ESQ.
District Attorney, Monroe County
BY: TIMOTHY PROSPERI, ESQ.
Assistant District Attorney

EDWARD J. NOWAK, ESQ.
Public Defender, Monroe County
By: EDWARD SCANLAN, ESQ.
Assistant Public Defender

Defendant Appears in Person

SUSAN R. FURGIUELE, C.S.R.
Official Court Reporter
Hall of Justice, Room 20
Rochester, NY 14614

MR. PROSPERI: Sir, you are Dwain Reed?

THE DEFENDANT: Yes, sir.

MR. PROSPERI: Your Honor, Mr. Huether from our office is engaged in a trial today. He told me that the Court was to set a trial date today. I believe the Court may have preliminarily discussed a May 1st date. And Mr. Huether says that would fit in his calendar.

THE COURT: How is that with the defense counsel?

MR. SCANLAN: That will be fine, Your Honor.

THE COURT: This matter's adjourned to May the 1st, 1995 for trial.

Now, it's my understanding he's already serving twenty-five years in Ohio?

MR. SCANLAN: Eight to twenty-five.

THE COURT: Eight to twenty-five. So there's no danger of him being released at all so no sense in my giving him his Parker warnings.

All right. See you on May the 1st for trial.

MR. SCANLAN: Further matter, Your Honor. Court may recall there's a co-defendant indictment, Earl Williams, who was recently brought back to this jurisdiction I think within the last couple of months. I assume that's also on your calendar.

THE COURT: Doesn't look like it's going to be ready on time for trial on that date.

MR. SCANLAN: I was going to remind the Court in case you were thinking that, that we had moved for severance.

THE COURT: If I try to put it on the same day, you bring that issue up again. But I don't think it's going to be ready; hearings, et cetera.

MR. PROSPERI: Thank you. The
People remain ready for trial.

* * * * *

CERTIFICATION

I, SUSAN R. FURGIUELE, hereby certify that I am an
Official Court Reporter, Monroe County, New York, duly
appointed and assigned to the within Court;

That I reported in stenotype shorthand the proceedings
had in County Court, on the 9th day of January, 1995, before the
Hon. David D. Egan, Judge, in the matter of THE PEOPLE OF
THE STATE OF NEW YORK -vs- DWAIN HILL, aka
MICHAEL HILL, Defendant;

And the foregoing transcript, pages numbered 2 through
3, is a true, accurate and complete record of those shorthand
notes.

s/Susan R. Furguele, C.S.R.
Official Court Reporter

Dated this 20th day of
April, 1995, at
Rochester, New York

[COURT PROCEEDING OF JULY 20, 1994]

STATE OF NEW YORK

COUNTY OF MONROE: COUNTY COURT

-----X
THE PEOPLE OF THE STATE OF NEW YORK: INDICT.

NO.

-against-

: 94-0160

: Murder 2

MICHAEL HILL, aka DWAIN REID,

: Robbery 1

:

Defendant.

: Argue

: Motions

-----X
Hall of Justice
Rochester, New York
July 20, 1994

BEFORE:

HONORABLE DAVID D. EGAN
County Court Judge

APPEARANCES:

HOWARD R. RELIN, ESQ.
District Attorney, Monroe County
BY: GREG HUETHER, ESQ.
Assistant District Attorney
On behalf of the People of the
State of New York

EDWARD NOWAK, ESQ.

Public Defender, Monroe County

BY: EDWARD SCANLAN, ESQ.

Assistant Public Defender

On behalf of the Defendant

REPORTED BY:

CAROLANN M. SCORZA, CSR
Senior Court Reporter

MR. HUETHER: For the record, sir, is your name Michael Hill, also known as Dwain Reid?

MR. SCANLAN: My client indicates his real name - - -

THE COURT: I can't hear him. You have to speak up.

THE DEFT: My name is Dwain Reid. I never went by the name Michael Hill.

MR. HUETHER: Mr. Scanlan is your attorney, here today; is that correct?

THE DEFT: Yes.

MR. HUETHER: Your Honor, Mr. Scanlan filed motions with my office, an Omnibus motion, and made it returnable for today. I just completed a trial yesterday and have not had the opportunity to draft a written response.

MR. SCANLAN: My client and I have no objection to an adjournment for that, Your Honor.

MR. HUETHER: I would request a brief adjournment to allow a written response, Your Honor, and I believe we will ultimately head towards a Wade Hearing based upon my recollection and information in the case.

THE COURT: Okay, adjourned to July 29th, then, for argument of motions.

MR. SCANLAN: Thank you, Your Honor.

THE COURT: That's with consent of both attorneys.

MR. HUETHER: Thank you, Your Honor.
(Whereupon this matter was concluded.)

- * * *

CERTIFICATION

I, CAROLANN M. SCORZA, CSR hereby certify that I am a Senior Court Reporter, at Rochester, Monroe County, New York, duly appointed:

That I reported in stenotype shorthand the proceedings had in Monroe County Court, on the 20th day of July, 1994 before the Honorable David D. Egan, in the matter of the People of the State of New York against Michael Hill, aka Dwain Reid, Defendant.

And the foregoing transcript, pages numbered 1 and 2 respectively, is a true, accurate and complete record of those shorthand notes.

s/Carolann M. Scorza
SENIOR COURT REPORTER

Dated this 20th day of
April, 1995
at Rochester, New York

[COURT PROCEEDING OF NOVEMBER 16, 1994]

STATE OF NEW YORK
COUNTY OF MONROE: COUNTY COURT

-----X
THE PEOPLE OF THE STATE OF NEW YORK: INDICT.
: NO.
-against- : 94-0160
: Murder 2
MICHAEL HILL, aka DWAIN REID, : Robbery1
:
Defendant :CONTROL
-----X

Hall of Justice
Rochester, New York
November 16, 1994

BEFORE:

HONORABLE DAVID D. EGAN
County Court Judge

APPEARANCES:

HOWARD R. RELIN, ESQ.
District Attorney, Monroe County
BY: GREG HUETHER, ESQ.
Assistant District Attorney
On behalf of the People of the
State of New York

EDWARD NOWAK, ESQ.
Public Defender, Monroe County
BY: EDWARD SCANLAN, ESQ.
Assistant Public Defender
On behalf of the Defendant

REPORTED BY: -

CAROLANN M. SCORZA, CSR
Senior Court Reporter

MR. HUETHER: Good morning, sir. Is your name Dwain Reid?

THE DEFT: Yes.

MR. HUETHER: Mr. Scanlan is your attorney?

THE DEFT: Yes, sir.

THE COURT: Alright, this is down for control date to make sure the minutes were sent to me and any memos, and I gather that's all been done?

MR. SCANLAN: That's correct.

MR. HUETHER: Your Honor, I did obtain the transcripts from the first and second trial regarding Elaine Weeks and I submitted those and I also submitted both sets of exhibits that were used in the prior trials that would have been presented, and the stickers and exhibit markers are accordingly coincidental with the transcripts. So you have everything, I think, that we discussed at the last appearance.

THE COURT: And, also, everyone made their final remarks on this.

MR. SCANLAN: That's correct.

THE COURT: Okay, thank you. The case will go on the trial calendar and I will review it and make a decision and get it over to you.

MR. SCANLAN: Very well. Thank you.
(Whereupon this matter was concluded.)

* * *

CERTIFICATION

I, CAROLANN M. SCORZA, CSR hereby certify that I am a Senior Court Reporter, at Rochester, Monroe County, New York, duly appointed:

That I reported in stenotype shorthand the proceedings had in Monroe County Court, on the 16th day of November, 1994 before the Honorable David D. Egan, in the matter of the People of the State of New York against Michael Hill, aka Dwain Reid, Defendant.

And the foregoing transcript, pages numbered 1 through 3, is a true, accurate and complete record of those shorthand notes.

s/Carolann M. Scorza
SENIOR COURT REPORTER

Dated this 20th day of
April, 1995
at Rochester, New York

[COURT PROCEEDING OF MAY 18, 1994]

COUNTY COURT STATE OF NEW YORK
COUNTY OF MONROE

-----x
THE PEOPLE OF THE STATE OF NEW YORK: Indict.
: No. 160
-vs- : Filed
: 3/11/94
DWAIN REED, a/k/a MICHAEL HILL, :Murd. 2d
a/k/a LEROY FOSTER, :Rob. 1st
:
Defendant. :Arraign-
-----x ment

Hall of Justice
Rochester, New York
May 18, 1994

Before:

HONORABLE DAVID D. EGAN
Monroe County Court Judge

Appearances:

For the People HOWARD R. RELIN
District Attorney, Monroe
County
BY: RICHARD ROXIN, ESQ.
Assistant District Attorney

For the Defendant

EDWARD J. NOWAK, ESQ.
Public Defender, Monroe
County
BY: BARBARA FARRELL,
ESQ.
RICHARD MARCHESE,
ESQ.
Assistant Public Defenders

DEFENDANT, present

REPORTED BY: Michael J. DeVito, C.S.R.
Official Court Reporter

PEOPLE v. REID

MR. ROXIN: Are you Michael Hill also known as Dwain Reid?

THE DEFENDANT: I'm Dwain Reid.

MR. ROXIN: Appearing in court today with Assistant Public Defender Barbara Farrell?

THE DEFENDANT: Yes.

MR. ROXIN: Your Honor, may this be adjourned to two o'clock this afternoon. It's being handled by Assistant District Attorney Gregory Huether who is on trial. He's in the middle of proceedings right now in front of Judge Sirkin.

I believe he would like to personally appear before the Court at that time.

THE COURT: Telling me you don't have a copy of the indictment, or something, or paperwork needed, or what's going on?

MR. ROXIN: Question of paperwork, Your Honor, and as this matter is an add-on to this morning's calendar, I believe the request is reasonable.

THE COURT: All right. Could we have him back here at 1:30? Could the district attorney be ready at 1:30?

MR. ROXIN: I will speak to Mr. Huether by then.

THE COURT: All right. Well, what we'll do is give him a little more time. We'll make it two o'clock.

(Case held to be recalled at two o'clock PM.)

(Two o'clock appearance for defendant is Richard Marchese.)

MR. ROXIN: Are you Michael Hill?

THE DEFENDANT: Yes, sir.

MR. ROXIN: Also known as Dwain Reid?

THE DEFENDANT: That's my real name, sir.

PEOPLE v. REID

MR. ROXIN: Appearing in court today with Assistant Public Defender Richard Marchese?

THE DEFENDANT: Yes.

MR. ROXIN: Your Honor, it's a sealed indictment. May I unseal it and proceed?

THE COURT: Please do. Is this - - Mr. Hill, or Mr. Reid, is your birthday April the 12th, 1967, or February 11th, 1967, or some other date?

THE DEFENDANT: Third the 12th - - March 12, 1967.

THE COURT: Okay.

MR. ROXIN: Mr. Reid, by Indictment 160, of 1994, filed on March 11, 1994, the Monroe County Grand Jury has filed this indictment which charges you with one count of murder in the second degree; one count of robbery in the first degree, as having been committed on or about December 31, 1992, in the County of Monroe, State of New York.

Do you waive a full reading of the indictment?

MR. MARCHESE: I would waive full reading of the indictment on his behalf and enter not-guilty pleas to all counts.

Our office interviewed Mr. Reid for eligibility. He's eligible for the services of the public defender.

THE COURT: Appointment is made nunc pro tunc.

MR. MARCHESE: I will try to get the information to the Court and assistant district attorney as soon as possible as to who the attorney of record will be. I acknowledge receipt of a 710.30 notice.

MR. ROXIN: There is attached to the indictment a CPL 710.30 notice indicating an oral statement made by this Defendant to a law enforcement officer which the People intend to make use of at the time of trial.

PEOPLE v. REID

Further indicates that there were identification procedures employed in this case, which the People further intend to make use of at the time of trial.

And CPL 710.30 notice finally contains demand for notice of alibi. People are ready for trial.

In addition to that I would like to serve upon the Defendant's attorney at this time the following documents, if I may? First is page 5 of the Gates Police Department crime report for crime report 4049-A.

In addition to that I'd like to serve upon the Defendant's attorney a Gates Police Department notification and waiver and an attached four-page Gates Police Department crime report again for CR4049-A.

THE COURT: Any particular dates on those crime reports?

MR. ROXIN: Those crime reports are dated -- first of all, Gates Police Department notification and waiver is dated March 11, 1994. The Gates Police Department addendum report which I referred, four pages in length, for identification purposes has in the top right-hand corner date of incident 12-31-92.

Finally, I'm serving upon the Defendant's attorney two-page memorandum which is typed and was submitted by Timothy Patton, sergeant with the -- I believe he's with the Cuyahoga County Sheriff's Department, entitled "Caribbean/Gang Task Force".

THE COURT: Is there a date on that?

MR. MARCHESE: No, Your Honor.

THE COURT: You gave the CR number, I believe?

MR. ROXIN: Yes, Your Honor, signed at the bottom by Lieutenant A. Hamill of the Gates Police Department. And for identification purposes, it is labeled as page 5 and CR number again is 4049-A. People are ready for trial.

PEOPLE v. REID

THE COURT: Thank you. And both attorneys have been given a copy of the Court's pretrial order. Case will go on the motion calendar.

Question of bail? District Attorney's position?

MR. ROXIN: We are asking this Court to hold the Defendant without bail. If the Court is inclined to set bail, I would like to be heard on that issue.

MR. MARCHESE: We have no opposition to the no-bail request at this time, Your Honor.

THE COURT: Now is the defendant presently serving time in another jurisdiction?

MR. MARCHESE: Yes, Your Honor, that's my understanding.

THE COURT: What does the District Attorney have in that regard?

MR. ROXIN: Your Honor, the information we have is that he is serving time in the State of Ohio.

THE COURT: You don't know how much or anything?

MR. ROXIN: Not at this time. I don't have that information. The transport deputy has indicated he believes it's nine to twenty-five years.

THE COURT: The Defendant is remanded to the custody of the Sheriff of the County of Monroe without bail. Anything further?

MR. MARCHESE: Want to calendar it for a date?

THE COURT: You have forty-five days within which to make your motions. It's on the motion calendar.

MR. ROXIN: Again, the People are ready for trial.

THE COURT: All right.

* * * * *

(Arraignment is concluded.)

CERTIFICATION

I, Michael J. DeVito, hereby certify that I am an Official Court Reporter, Supreme and County Courts, Rochester, Monroe County, New York, duly appointed;

That I reported by machine shorthand the proceeding had in Monroe County Court on the 18th day of May, 1994, before the Honorable David D. Egan, Monroe County Court Judge, in the matter of the People of the State of New York against Dwain Reid, a/k/a Michael Hill, a/k/a Leroy Foster, Defendant;

And the foregoing transcript, pages numbered 2 through 8, is a true, accurate and correct record of my machine shorthand notes.

s/Michael J. DeVito

Michael J. DeVito

Dates this 20th day
of April, 1995
at Rochester, New York

STATE OF NEW YORK COUNTY OF MONROE
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DWAIN REID (MICHAEL HILL),

Defendant

RESPONDING
AFFIRMATION

Indict. No. 160/94

Filed 3/11/94

Index No. 2549/94

STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

EDWARD F. SCANLAN, an attorney admitted to practice in the State of New York, affirms under penalty of perjury pursuant to CPLR 2106 that:

1. I am the First Assistant Public Defender for the County of Monroe and have been assigned to represent the defendant in this action.

2. This affirmation is made in response to prosecution's reply to my Notice of Motion to Dismiss the Indictment pursuant to CPL Article 580.20.

3. The information contained herein is made upon personal knowledge or upon information and belief, the sources for such information and belief being a review of the various papers filed relative to this Indictment.

4. On January 9, 1995 this Court set a trial date of May 1, 1995. By responding that the day would be fine, your affiant was merely indicating that there was no barrier to proceeding on that date.

5. In the latter of part of December 1994, your affiant was contacted by telephone by this Court's secretary, Delores Madau, who inquired if your affiant could be ready to proceed

to trial in January or February of 1995. Your affiant responded that any date in those two months would be acceptable. Mrs. Madau indicated the case would be called in the first week of January to set a trial date. Your affiant asked it be called on January 9, 1995, rather than the prior week, and Mrs. Madau agreed to calendar the case for the 9th of January, 1995 to set a trial date.

6. Since December 5th of 1994, your affiant has never indicated a lack of readiness for any trial date for this Indictment, nor has your affiant or defendant ever requested or suggested a trial date beyond the 180 day limit, or waived the 180 day limit.

7. Your affiant specifically denies that portion of paragraph 9 of the prosecution's Reply to Notice of Motion that states the May 1, 1995 trial date "was specifically agreed upon by the defense after the Court and both counsel reviewed their prospective schedules and availability in 1995."

8. Your affiant was able and ready to try this case in January or February of 1995 and advised this Court's secretary, Mrs. Madau, of this availability.

9. If the prosecution's schedule or the Court's schedule did not allow this trial to commence until May 1, 1995, that delay is not attributable to the defense.

s/Edward F. Scanlan
EDWARD F. SCANLAN

Affirmed this
2nd day of May, 1995

Supreme Court of the United States

No. 98-1299
— New York,
Petitioner
v.
Michael Hill

ORDER ALLOWING CERTIORARI. Filed May 17, 1999.

The petition herein for a writ of certiorari to the Court
of Appeals of New York is granted.

May 17, 1999